

Amendment No. 1 to HB0619

Coleman
Signature of Sponsor

AMEND Senate Bill No. 312*

House Bill No. 619

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by adding the following as a new section:

Section 24-7-123.

(a) Notwithstanding any provision of this part to the contrary, a video recording of an interview of a child by a forensic interviewer containing a statement made by such child under thirteen (13) years of age describing any act of sexual contact performed with or on such child by another is admissible and may be considered for its bearing on any matter to which it is relevant in evidence at the trial of the person for any offense arising from such sexual contact if the requirements of this section are met.

(b) A video recording may be admitted as provided in subsection (a) if:

(1) The child testifies, under oath, that the offered video recording is a true and correct recording of the events contained therein, and the child is available for cross examination;

(2) The video recording is shown to the reasonable satisfaction of the court, in a hearing conducted pre-trial, to possess particularized guarantees of trustworthiness. In determining whether a statement possesses particularized guarantees of trustworthiness, the court shall consider the following factors:

(A) The mental and physical age and maturity of the child;

(B) Any apparent motive the child may have to falsify or distort the event, including but not limited to, bias or coercion;

(C) The timing of the child's statement;

(D) The nature and duration of the alleged abuse;

(E) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

(F) Whether the statement is spontaneous or directly responsive to questions;

(G) Whether the manner in which the interview was conducted was reliable, including but not limited to, the absence of any leading questions;

(H) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement;

(I) The relationship of the child to the offender;

(J) Whether the equipment that was used to make the video recording was capable of making an accurate recording; and

(K) Any other factor deemed appropriate by the court.

(3) The interview was conducted by a forensic interviewer who met the following qualifications at the time the video recording was made, as determined by the court:

(A) Was employed by a child advocacy center that meets the requirements of § 9-4-213 (a) or (b);

(B) Had graduated from an accredited college or university with a bachelor's degree in a field related to social service, education, criminal justice, nursing, psychology or other similar profession;

(C) Had experience equivalent to three (3) years of fulltime professional work in one or a combination of the following areas:

(i) Child protective services;

(ii) Criminal justice;

(iii) Clinical evaluation;

(iv) Counseling; or

(v) Forensic interviewing or other comparable work with children;

(D) Had completed a minimum of forty (40) hours of forensic training in interviewing traumatized children and fifteen (15) hours of continuing education annually;

(E) Had completed a minimum of eight (8) hours of interviewing under the supervision of a qualified forensic interviewer of children;

(F) Had knowledge of child development through coursework, professional training or experience;

(G) Had no criminal history as determined through a criminal records background check; and

(H) Had actively participated in peer review.

(4) The recording is both visual and oral and is recorded on film or videotape or by other similar audio-visual means;

(5) The entire interview of the child was recorded on the video recording and the video recording is unaltered and accurately reflects the interview of the child; and

(6) Every voice heard on the video recording is properly identified as determined by the court.

(c) The video recording admitted pursuant to this section shall be discoverable pursuant to the Tennessee rules of criminal procedure.

(d) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

(e) The court shall enter a protective order to restrict the video recording used pursuant to this section from further disclosure or dissemination. Such video recording shall not become a public record in any legal proceeding. The court shall order the video recording be sealed and preserved following the conclusion of the criminal proceeding.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.